MAY 28 1982

GA 1.13:GGD-82-8/sum

546-D

REPORT BY THE

Comptroller General

OF THE UNITED STATES

ORIGINAL

COMPLETED

U.S. Marshals Can Serve Civil Process And Transport Prisoners More Efficiently

9

SUMMARY

U.S. marshals are responsible for serving judicial process and moving Federal prisoners. These duties can be accomplished at less cost to the Government if

--the Congress revises legislation to permit marshals to recover the cost of serving process for private litigants;

--the Judicial Conference of the United States develops judicial procedure rules which would provide that marshals serve civil process only when required by law or when necessary by the courts and which would give all districts the option of using certified mail rather than serving all summonses; and

--the Attorney General makes better use of the Consolidated Prisoner Transportation System.

GGD-82-8
APRIL 22, 1982

1

NOTE TO RECIPIENTS

This summary includes the cover, digest, and table of contents of a GAO report. You may obtain a copy of the complete report by following the instructions below.

For sale by:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

Telephone (202) 783-3238

Members of Congress; heads of Federal, State, and local government agencies; members of the press; and libraries can obtain GAO documents from:

U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760

Telephone (202) 275-6241

COMPTROLLER GENERAL'S REPORT
TO SENATOR MAX BAUCUS

U.S. MARSHALS CAN SERVE CIVIL PROCESS AND TRANSPORT PRISONERS MORE EFFICIENTLY

D I G E S T

Senator Max Baucus asked GAO to review various functions performed by U.S. marshals. This report, the second in a series of three, evaluates the Marshals Service's efforts to serve and execute civil process for private litigants and to transport Federal prisoners between judicial districts. Opportunities exist to reduce the Government's cost of performing both functions, as well as to reduce the potential dangers to the public associated with the transportation of Federal prisoners.

THE SERVICE OF CIVIL PROCESS: LEGISLATIVE AND PROCEDURAL CHANGES NEEDED

Since their creation in 1789, marshals have been required by law to serve civil process when directed by the courts. Civil process (written directions issued by the courts to notify and/or compel certain actions during the progress of civil litigation) is served and fees are charged for this service in accordance with judicial rules and Federal statute. These rules and the statute are causing the process serving function to be uneconomical and inefficient.

Private litigants are charged a fee by marshals which varies by type of process served. These fees are set by statute and have not been changed significantly in 180 years. The current fee structure does not permit marshals to recover the cost of serving process for private litigants. As a result, in fiscal year 1980 the Government subsidized the service of private civil process (about 353,000 pieces) at an estimated cost of between $2 and $4.7 million. (See pp. 5 to 7.)

Furthermore, Rule 4 of the Federal Rules of Civil Procedure which governs the service of civil process causes marshals to be excessively involved with the performance of this function. It also restricts the routine use of an efficient

BEST DOCUMENT AVAILABLE

BEST DOCUMENT AVAILABLE

method of service for summonses and complaints--certified mail.

Although recent changes have been made to Rule 4 to broaden the range of people with blanket authorization to serve civil process and the ability of the courts to specially appoint persons to serve civil process, these changes have not had a significant impact. Marshals continue to serve most civil process. The rules of procedure recognize that marshals do not need to serve most civil process. However, as long as Rule 4 continues to provide blanket authorization for marshals to serve all civil process, and the fees for this service remain low, private litigants have little incentive to use persons other than marshals to serve their process. (See pp. 8 to 10.)

Rule 4 also allows marshals to use certified mail to serve civil summonses and complaints to individuals, business concerns, and unincorporated associations. This method of serving process is allowed if the State where the Federal court is located has a law authorizing this manner of service. However, according to Marshals Service information, most States do not specifically allow the routine use of certified mail to serve civil summonses and complaints. Therefore, most judicial districts do not routinely use certified mail to serve a summons. GAO reviewed marshals' efforts to serve civil summonses in three districts that routinely use certified mail to serve this type of process. In these districts, certified mail was found to be an effective and efficient method of service and did not hamper court operations. (See pp. 10 to 13.)

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress

--revise 28 U.S.C. 1921 to give the Attorney General authority to periodically revise the fees that marshals charge for serving civil process for private litigants in Federal court and

--require that the established fees provide full recovery of marshals' actual operating costs to serve private civil process exclusive of the costs incurred to serve process for indigents. (See p. 14 and app. XIII.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

GAO recommends that the Judicial Conference (the policymaking body of the judiciary) develop amendments to Rule 4 of the Federal Rules of Civil Procedure which would

--require that civil process be served by persons specially appointed or approved by the courts to perform this function, except in those situations when service of process by marshals is specifically required by law or is deemed necessary by the courts and

--authorize all Federal judicial districts to use certified mail as one of the methods of serving summonses and complaints except when service is to be made to an infant or an incompetent, and designate the person(s) who may properly sign for the receipt of such process. (See pp. 14 and 15.)

THE COSTS AND DANGERS OF FEDERAL PRISONER MOVEMENTS CAN BE REDUCED

During fiscal year 1980, marshals transported about 36,000 Federal prisoners across Federal judicial district boundaries. In an effort to reduce the costs of this function, the Marshals Service in 1979 developed the National Prisoner Transportation System. The System is not being used to its full potential which results in unnecessary transportation costs and danger to the public.

The System consists of a regularly scheduled contract airlift with a ground support of marshal vans and automobiles as well as Federal Prison System buses. Trip coordinators attempt to reduce the amount of Marshals Service resources (staff and dollars) devoted to prisoner movements by evaluating all interdistrict

BEST DOCUMENT AVAILABLE

BEST DOCUMENT AVAILABLE

trip requirements and attempting to use the most efficient transportation component. When existing components cannot meet a particular movement need, a commercial flight is used.

Moving prisoners on commercial flights is more costly, inefficient, and more dangerous to the public than using other existing transportation components. Marshals Service data shows that the average cost to transport a prisoner on a commercial flight is four times greater than the most costly transportation system component. Also, Marshals Service policies require that there be at least one more guard than the number of prisoners on each trip made on a commercial flight. In comparison, only five personnel are used to staff the Marshals Service's contract airlift which can transport up to 44 prisoners. The use of commercial flights also exposes the public to potential harm because prisoners classified as maximum security risks are often transported by this mode.

While the National Prisoner Transportation System has improved the economy and efficiency of prisoner transportation, the Marshals Service has still not used it to its full potential because of management shortcomings. System operations can be improved by

--reducing the number of prisoners being flown on commercial flights without urgent movement needs (see pp. 21 to 22),

--ensuring that trip coordinators routinely have firm deadline dates before authorizing prisoners to be moved by commercial flights (see pp. 22 to 24),

--improving communication concerning prisoner movements among marshal personnel and prosecutors (see p. 23), and

--critically assessing proposed prisoner movements for cost-effectiveness (see pp. 24 and 25).

Such improvements would reduce the costs and dangers associated with moving Federal prisoners by keeping the use of commercial flights to a minimum.

BEST DOCUMENT AVAILABLE

RECOMMENDATIONS TO THE ATTORNEY GENERAL

GAO recommends that the Attorney General

--implement a definitive and detailed prisoner movement priority system for trip coordinators to use when scheduling trips,

--gather more specific deadline information for each prisoner movement,

--require U.S. Attorneys' Offices to provide marshal personnel more timely information in order that the maximum amount of lead times are provided trip coordinators when scheduling trips, and

--direct trip coordinators to critically evaluate each proposed prisoner movement for cost-effectiveness. (See p. 26.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Administrative Office of the U.S. Courts, the Department of Justice, and the chief judges in the eight districts where GAO performed extensive audit work commented on GAO's report.

--The Administrative Office said that all of GAO's recommendations relating to process service were either supported or were being considered. It did not comment on GAO's recommendations relating to prisoner transportation.

--The Department was in general agreement with all of GAO's recommendations.

--All chief judges specifically commenting on GAO's recommendation to raise the fees marshals charge for serving civil process and all but one chief judge specifically commenting on GAO's recommendations relating to prisoner transportation agreed with them. Additionally, five chief judges agreed with GAO's recommendations to utilize alternative methods of process service while three chief judges expressed some disagreement with these recommendations. (See pp. 27 to 33.)

BEST DOCUMENT AVAILABLE

Contents

		Page
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Service of civil process	1
	Transportation of Federal prisoners	2
	Relationship to previous GAO report on marshals being subject to separate lines of authority	2
	Objectives, scope, and methodology	3
2	THE SERVICE OF CIVIL PROCESS: LEGISLATIVE AND PROCEDURAL CHANGES NEEDED	5
	The cost of serving civil process is not being recovered	5
	Procedural rules governing service of civil process should be revised	8
	Conclusions	14
	Recommendations to the Congress	14
	Recommendations to the Judicial Conference of the United States	14
3	THE COSTS AND DANGERS OF FEDERAL PRISONER MOVEMENTS CAN BE REDUCED	16
	National Prisoner Transportation System: a centralized method to move prisoners	16
	Better management and more efficient utilization of the National Prisoner Transportation System is possible	20
	Conclusions	26
	Recommendations to the Attorney General	26
4	AGENCY COMMENTS AND OUR EVALUATION	27
	Marshals are not needed to serve most civil process	27
	All districts should have the opportunity to use certified mail	32
	Prisoner transportation operations can be improved	33
APPENDIX		
I	Letter dated September 17, 1979, from Senator Max Baucus	34

BEST DOCUMENT AVAILABLE

APPENDIX		Page
II	Letter dated October 1, 1981, from the Administrative Office of the U.S. Courts	36
III	Letter dated October 9, 1981, from the Department of Justice	38
IV	Letter dated November 6, 1981, from the Department of Justice to the Standing Committee on Rules of Practice and Procedure, Judicial Conference of the United States	43
V	Letter dated September 9, 1981, from the Acting Chief Judge, Southern District of California	44
VI	Letter dated September 10, 1981, from the Chief Judge, Eastern District of Virginia	45
VII	Letter dated September 22, 1981, from the Chief Judge, Eastern District of Kentucky	48
VIII	Letter dated September 29, 1981, from the Chief Judge, Southern District of Texas	50
IX	Letter dated September 30, 1981, from the Chief Judge, Eastern District of Louisiana	51
X	Letter dated September 30, 1981, from the Chief Judge, Central District of California	53
XI	Letter dated October 2, 1981, from the Chief Judge, Western District of North Carolina	55
XII	Letter dated October 13, 1981, from the Chief Judge, District of Maryland	56
XIII	Proposed amendments to Title 28, United States Code, for the setting of fees for process and related matters	59

ABBREVIATIONS

GAO	General Accounting Office
U.S.C.	United States Code